

ESTTA Tracking number: **ESTTA371127**

Filing date: **09/30/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195847
Party	Defendant Levit Labs LLC
Correspondence Address	PAULA E HOPKINS KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585 UNITED STATES
Submission	Answer
Filer's Name	Jessica M. Garrett
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Signature	/Jessica M. Garrett/
Date	09/30/2010
Attachments	Levit - Response to Notice of Default.pdf ( 2 pages )(71967 bytes ) Levit - Answer.pdf ( 4 pages )(107424 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/853,464  
Trademark: GYM IN A JAR  
Published in the *Official Gazette* on March 30, 2010

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philosophy, inc., :  
 :  
 : *Opposer,* :  
 : Opposition No. 91195847  
 v. :  
 :  
 LEVIT LABS LLC :  
 :  
 : *Applicant.* :  
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**RESPONSE TO NOTICE OF DEFAULT**

In accordance with Fed. R. Civ. P. 55(b), Applicant, Levit Labs LLC, respectfully requests that the notice of default sent on September 23, 2010, be set aside and that default judgment not be entered against it.

Opposer served a Notice of Opposition by U.S. mail on Applicant on July 28, 2010. Applicant received the Notice of Opposition on July 30, 2010. However, Applicant never received any official notice of the filing of the opposition from the United States Patent and Trademark Office Trademark Trial and Appeal Board (the "TTAB"). Accordingly, Applicant was unaware of the September 7, 2010 deadline to answer.

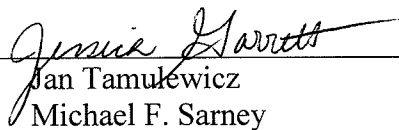
Applicant respectfully requests that a default judgment not be entered against it because the delay in filing an answer is not the result of any willful conduct or gross neglect. To the contrary, Applicant held its answer in abeyance until official notice had been received from the TTAB. Second, Opposer will not be substantially prejudiced by the short delay in answering.

Finally, Applicant has a meritorious defense to the action. Namely, the mark GYM IN A JAR is not likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or association of Applicant with Opposer, based on Opposer's registrations for HOPE IN A JAR and MIRACLE IN A JAR, and Opposer's pending application for HOPE IN A JAR ORGANIC.

WHEREFORE, Applicant prays that default judgment not be entered against it and for any other relief deemed just and proper. Applicant submits herewith its answer to the Notice of Opposition.

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

By:   
Jan Tamulewicz  
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*Attorneys for Applicant*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Notice of Default is being deposited in the United States mail, first class postage prepaid, to Opposer at the address and on the date indicated below:

David O. Caplan  
SNELL & WILMER LLP  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202

Dated: September 30, 2010

By: 

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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 : *Opposer,* :  
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 : **ANSWER**  
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 LEVIT LABS LLC :  
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 : *Applicant.* :  
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As and for its answer to the allegations contained in the Notice of Opposition filed by philosophy, inc., Applicant, Levit Labs LLC, by and through its counsel, Katten Muchin Rosenman LLP, responds as follows:

1. Applicant admits the allegations contained in paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations contained in paragraph 2 of the Notice of Opposition.
3. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the Notice of Opposition.
4. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 4 of the Notice of Opposition.
5. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant admits that it filed its intent-to-use Trademark Application Serial No. U.S. 77/853,464 on October 1, 2009. Applicant does not possess sufficient knowledge or information to admit or deny the remaining allegations contained in paragraph 6 of the Notice of Opposition.

7. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 7 of the Notice of Opposition.

8. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 8 of the Notice of Opposition.

9. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant does not possess sufficient knowledge or information to admit or deny the allegations contained in paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations contained in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Notice of Opposition.

17. Applicant admits the allegations contained in paragraph 17 of the Notice of Opposition.

18. Applicant admits the allegations contained in paragraph 18 of the Notice of Opposition, except denies that the application was abandoned for “failure to provide a *bona fide* statement of use of the mark for the recited goods in International Class 3.”

19. Applicant admits that it filed intent-to-use Trademark Application Serial No. U.S. 77/853,464 on October 21, 2009, and that this date is prior to December 7, 2009, the date on which the U.S. Patent and Trademark Office deemed Application Serial No. 78/663,704 abandoned. Applicant denies the remaining allegations contained in paragraph 19 of the Notice of Opposition.

20. Applicant admits the allegations contained in paragraph 20 of the Notice of Opposition.

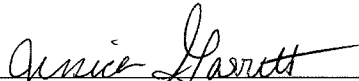
21. Applicant lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 21 of the Notice of Opposition.

#### AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief can be granted.

Dated: New York, New York  
September 30, 2010

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